

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-100

13
14 **KAREN LEE MCCORMACK**
15 **11100 Telegraph Rd, #16**
16 **Ventura, CA 93004**
17 **Registered Nurse License No. 691741**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about August 8, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs, filed Accusation No. 2013-100 against Karen Lee McCormack (Respondent)
24 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

25 2. On or about November 1, 2006, the Board of Registered Nursing (Board) issued
26 Registered Nurse License No. 691741 to Respondent. The Registered Nurse License was in full
27 force and effect at all times relevant to the charges brought in Accusation No. 2013-100 and will
28 expire on January 31, 2014, unless renewed.

1 3. On or about August 8, 2012, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 2013-100, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
6 of record was and is: 11100 Telegraph Rd, #16, Ventura, CA 93004.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
15 may nevertheless grant a hearing.

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2013-
18 100.

19 7. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
23 respondent.

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 2013-100, finds
that the charges and allegations in Accusation No. 2013-100, are separately and severally, found
to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$2,215.00 as of November 15, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Karen Lee McCormack has subjected her Registered Nurse License No. 691741 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Business and Professions Code sections 490 and 2761(f) for (1) her conviction on January 12, 2011 for violating Vehicle Code section 23152(a) (driving while under the influence of alcohol/drugs) in which she admitted to a special allegation under Vehicle Code section 23578 that she had driven with a .15% or greater blood alcohol level; and one count of violating Vehicle Code section 20002(a) (hit-and-run) and for (2) her conviction in November 2008 of violating Vehicle Code section 23152(b) (driving with an equal to or greater than 0.08% blood alcohol). Both convictions are substantially related to the practice of registered nursing under title 16 section 1444 of the California Code of Regulations.

b. Business and Professions Code sections 2761(a) and 2762 (c) for sustaining those two substance-abuse related convictions, both of which involved the consumption of alcohol and the use of prescription drugs.

c. Business and Professions Code sections 2761(a) and 2762(b) for dangerous use of alcohol and controlled substances for the conduct underlying the 2011 conviction, in which Respondent endangered herself or others by using alcohol and prescription drugs, driving her car, colliding with another car, and attempting to drive off and for the conduct underlying the 2008 conviction, in which Respondent consumed drove while under the influence of alcohol and drugs.

d Business and Professions Code section 2761(a) because the Board's Diversion Evaluation Committee terminated her from its diversion program in April 2012 and determined

1 that she presented a threat to the public or her own health and safety because she failed to follow
2 the diversion program's treatment program.

3 ///

4 ///

5 ///

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED February 8, 2012

Raymond Hall
FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General

3 GEOFF WARD
Supervising Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2660
6 Facsimile: (213) 897-2804
Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2013-100

12 **KAREN LEE MCCORMACK**
11100 Telegraph Road, #16
13 Ventura, CA 93004

ACCUSATION

14 Registered Nurse License No. 691741

15 Respondent:

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs (Board).

22 2. On or about November 1, 2006, the Board issued Registered Nurse License No.
23 691741 to Karen Lee McCormack (Respondent). The Registered Nurse License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on January 31, 2014,
25 unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2750 provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTES

7. Section 2761 in pertinent part authorizes the Board to take disciplinary action for certain misconduct;

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . ."

8. Section 2762 in pertinent part specifies that certain drug- and alcohol-related offenses constitute unprofessional conduct:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to:

1 the public the practice authorized by his or her license.

2 (c) Be convicted of a criminal offense involving the prescription,
3 consumption, or self-administration of any of the substances described in
4 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
5 record pertaining to, the substances described in subdivision (a) of this section, in
6 which event the record of the conviction is conclusive evidence thereof."

7 9. Section 2770.7 authorizes the Board to discipline registered nurses for unprofessional
8 conduct committed before, during, or after participation in a diversion program for substance
9 abuse or mental illness rehabilitation, and authorizes the use of diversion records in certain
10 situations:

11 (a) The board shall establish criteria for the acceptance, denial, or
12 termination of registered nurses in the diversion program. Only those registered
13 nurses who have voluntarily requested to participate in the diversion program shall
14 participate in the program.

15 (b) A registered nurse under current investigation by the board may
16 request entry into the diversion program by contacting the board. Prior to authorizing
17 a registered nurse to enter into the diversion program, the board may require the
18 registered nurse under current investigation for any violations of this chapter or any
19 other provision of this code to execute a statement of understanding that states that
20 the registered nurse understands that his or her violations that would otherwise be the
21 basis for discipline may still be investigated and may be the subject of disciplinary
22 action.

23 (c) If the reasons for a current investigation of a registered nurse are
24 based primarily on the self-administration of any controlled substance or dangerous
25 drug or alcohol under Section 2762, or the illegal possession, prescription, or
26 nonviolent procurement of any controlled substance or dangerous drug for self-
27 administration that does not involve actual, direct harm to the public, the board shall
28 close the investigation without further action if the registered nurse is accepted into
the board's diversion program and successfully completes the requirements of the
program. If the registered nurse withdraws or is terminated from the program by a
diversion evaluation committee, and the termination is approved by the program
manager, the investigation shall be reopened and disciplinary action imposed, if
warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall
preclude the board from investigating or continuing to investigate, or taking
disciplinary action or continuing to take disciplinary action against, any registered
nurse for any unprofessional conduct committed before, during, or after participation
in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that
the withdrawal or termination from the diversion program at a time when the program
manager or diversion evaluation committee determines the licensee presents a threat
to the public's health and safety shall result in the utilization by the board of diversion
treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure

1 to comply with program requirements is subject to disciplinary action by the board
2 for acts committed before, during, and after participation in the diversion program. A
3 registered nurse who has been under investigation by the board and has been
4 terminated from the diversion program by a diversion evaluation committee shall be
5 reported by the diversion evaluation committee to the board."

6 10. Section 2770.11 authorizes the Board to terminate a nurse for noncompliance with a
7 diversion program and to use diversion records in disciplinary proceedings if the terminated nurse
8 presents a threat to the public or his or her own health and safety:

9 "(a) Each registered nurse who requests participation in a diversion
10 program shall agree to cooperate with the rehabilitation program designed by the
11 committee and approved by the program manager. Any failure to comply with the
12 provisions of a rehabilitation program may result in termination of the registered
13 nurse's participation in a program. The name and license number of a registered nurse
14 who is terminated for any reason, other than successful completion, shall be reported
15 to the board's enforcement program.

16 (b) If the program manager determines that a registered nurse, who is
17 denied admission into the program or terminated from the program, presents a threat
18 to the public or his or her own health and safety, the program manager shall report the
19 name and license number, along with a copy of all diversion records for that
20 registered nurse, to the board's enforcement program. The board may use any of the
21 records it receives under this subdivision in any disciplinary proceeding."

22 REGULATIONS

23 11. California Code of Regulations, title 16, section 1444 defines when a conviction or
24 act is substantially related to nursing:

25 "A conviction or act shall be considered to be substantially related to the
26 qualifications, functions or duties of a registered nurse if to a substantial degree it
27 evidences the present or potential unfitness of a registered nurse to practice in a
28 manner consistent with the public health, safety, or welfare."

12. California Code of Regulations, title 16, section 1448 provides grounds for a
diversion committee to terminate a nurse from a diversion program:

"The committee may terminate a nurse's participation in the program for
any of the following reasons:

(a) Successful completion of the program designated by the committee.

(b) Failure to comply with the rehabilitation program designated by the
committee.

(c) Failure to comply with any of the requirements set forth in Section
1447.

1 (d) Failure to substantially benefit from participation in the program.

2 (e) Receipt of information by the board which, after investigation,
3 indicates the participant may have violated a provision of the laws governing the
practice of nursing, Chapter 6 (commencing with Section 2700) of Division 2 of the
Code, excluding Section 2762."

4 **COST RECOVERY**

5 13. Section 125.3 provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Convictions of Substantially Related Crimes)**

11 14. Respondent is subject to disciplinary action under sections 490 and 2761,
12 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444 because
13 she was twice convicted of crimes which to a substantial degree evidence her present or potential
14 unfitness to practice nursing in a manner consistent with the public health, safety, or welfare, as
15 follows:

16 a. On or about January 12, 2011, in the criminal proceeding entitled *People v. Karen*
17 *Lee McCormack* (Super Ct. Ventura County, Case No. 201004356MA), Respondent pled guilty
18 to and was convicted of two misdemeanors: one count of violating Vehicle Code section 23152(a)
19 (driving while under the influence of alcohol/drugs) in which she admitted to a special allegation
20 under Vehicle Code section 23578 that she had driven with a .15% or greater blood alcohol level;
21 and one count of violating Vehicle Code section 20002(a) (hit-and-run). The Court sentenced
22 Respondent to 96 hours of jail, placed her on 36 months probation, and ordered her to complete a
23 nine-month driving under the influence program.

24 b. The circumstances underlying the conviction are that on or about December 7, 2010,
25 Respondent drove under the influence of alcohol and prescription medication, cut in front of
26 another car, collided with it, and then fled the scene of the accident.

27 c. The 2011 conviction followed a similar conviction in November 2008. In that case,
28 *People v. Karen Lee McCormack* (Super Ct. Ventura County, 2008, No. 2008026494MA),

1 Respondent pled guilty to and was convicted of one misdemeanor count of violating Vehicle
2 Code section 23152(b) (driving with an equal to or greater than 0.08% blood alcohol). The Court
3 sentenced Respondent to five days in jail, placed her on 36 months probation, and ordered her to
4 complete a three-month driving under the influence program.

5 d. The circumstances underlying that conviction are that on or about July 1, 2008,
6 Respondent was arrested after driving while under the influence of alcohol and prescription
7 medication.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Alcohol/Drug Related Conviction)**

10 15. Respondent's alcohol- and drug-related convictions also subject her to disciplinary
11 action for unprofessional conduct under sections 2761 (a) (authorizing discipline for
12 unprofessional conduct) and section 2762 (c) (defining substance-abuse related convictions as
13 unprofessional conduct) because they involved the consumption or self-administration of alcohol
14 and controlled substances. Paragraph 14 and its subparagraphs are realleged and incorporated
15 into this cause for discipline.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Alcohol and Prescription Drugs)**

18 16. Respondent is also subject to disciplinary action for unprofessional conduct under
19 sections 2761 (a) (authorizing discipline for unprofessional conduct) and 2762 (b) (defining the
20 dangerous or injurious use of certain substances as unprofessional conduct) for dangerous use of
21 alcohol and prescription drugs for her two driving under the influence convictions and the
22 circumstances leading up to those convictions.

23 17. As alleged in paragraph 14 and its subparagraphs, which are realleged and
24 incorporated into this cause for discipline, on December 7, 2010 Respondent endangered herself
25 or others by using alcohol and prescription drugs, driving her car, colliding with another car, and
26 attempting to drive off.

27 18. Also, on July 1, 2008, Respondent endangered herself and others by using alcohol
28 and prescription drugs and driving her car.

1
2 **FOURTH CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct Resulting in Termination from Diversion Program)**

4 19. Respondent is also subject to disciplinary action for unprofessional conduct under
5 section 2761(a) because the Board's Diversion Evaluation Committee terminated her from its
6 diversion program in April 2012 and determined that she presented a threat to the public or her
7 own health and safety. The basis for the termination and determination was her unprofessional
8 conduct in failing to follow the treatment program she agreed to, including (a) failing to obtain an
9 evaluation and treatment from an inpatient program for substance-abuse and mental health
10 problems; (b) failing to respond to a call for random drug testing; (c) taking prohibited
11 prescription medication without providing proof a physician had prescribed it or had a plan to
12 reduce her reliance on it; and (d) stating she no longer wished to participate in diversion despite
13 not having treated her problems.

14 **DISCIPLINE CONSIDERATIONS**

15 20. To determine the degree of discipline, Complainant alleges that on or about
16 November 1, 2006, the Board issued Respondent's license after she disclosed on her initial
17 license application that she had a driving under the influence conviction in 2005.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 691741, issued to Karen Lee McCormack;
2. Ordering Karen Lee McCormack to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

August 8, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2011601535
51030752_4.doc